

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION**

CIVIL ACTION NO. 04-11467-MAP

DOUGLAS DYNAMICS, LLC,
Plaintiff/Judgment Creditor

B&P SUPPLY, INC.,
Defendant/Judgment Debtor

**JUDGMENT CREDITOR'S
MOTION TO COMPEL
PRODUCTION OF DOCUMENTS
(MEMORANDUM INCORPORATED)**

Pursuant to Fed. R. Civ. P. 37 and 69, the Judgment Creditor, Douglas Dynamics, LLC ("Douglas Dynamics"), hereby moves the Court to compel the Judgment Debtor, B&P Supply, Inc. ("B&P Supply"), to produce documents responsive to Judgment Creditor's First Set of Document Requests. As grounds for this motion, Douglas Dynamics states as follows:

1. Douglas Dynamics was awarded judgment against B&P Supply in this matter in the amount of \$139,247.93. *See* Affidavit of Counsel attached hereto as Exhibit 1, ¶ 2.
2. To date, B&P Supply has paid no portion of the award. *See* Affidavit of Counsel, ¶ 3.
3. Jennifer K. Cannon, counsel for Douglas Dynamics, placed a telephone call to Jack E. Houghton, Jr., counsel of record for B&P Supply, on January 19, 2007 and left a voicemail message. In the voicemail message, Ms. Cannon informed Mr. Houghton that Douglas Dynamics intended to serve document requests. *See* Affidavit of Counsel, ¶ 4.
4. On January 23, 2007, Douglas Dynamics served Judgment Creditor's First Set of Document Requests on Mr. Houghton by facsimile and first-class mail. The transmittal letter requested that Mr. Houghton inform Ms. Cannon as soon as possible if Mr. Houghton was not still representing B&P Supply. *See* Affidavit of Counsel, ¶ 5.

5. To date, B&P Supply has produced no documents and made no reply to Judgment Creditor's First Set of Document Requests. *See* Affidavit of Counsel, ¶ 6.

6. In accordance with Local Rule 37.1, on February 27, 2007, Ms. Cannon placed a telephone call to Mr. Houghton and was informed that Mr. Houghton was unavailable. Ms. Cannon left a message for Mr. Houghton requesting that he call Ms. Cannon concerning B&P Supply's failure to produce documents or respond to Judgment Creditor's First Set of Document Requests. Mr. Houghton never responded to this message. *See* Affidavit of Counsel, ¶ 7.

7. On March 14, 2007, Ms. Cannon placed another telephone call to Mr. Houghton and was again informed that Mr. Houghton was unavailable. Ms. Cannon left another message for Mr. Houghton requesting that he call Ms. Cannon concerning B&P Supply's failure to produce documents or respond to Judgment Creditor's First Set of Document Requests. Mr. Houghton never responded to this message. *See* Affidavit of Counsel, ¶ 8.

8. Mr. Houghton has not informed counsel for Douglas Dynamics that his status as attorney of record for B&P Supply has changed or that he no longer represents B&P Supply. *See* Affidavit of Counsel, ¶ 9.

9. On March 16, 2007, Ms. Cannon sent a letter to Mr. Houghton by facsimile and first-class mail requesting that B&P Supply produce documents responsive to Judgment Creditor's First Set of Document Requests and informing Mr. Houghton that Douglas Dynamics intended to file a motion to compel production if the documents were not produced by March 23, 2007. Mr. Houghton never responded to this message. *See* Affidavit of Counsel, ¶ 10.

10. Douglas Dynamics is entitled to inspect the documents requested in Judgment Creditor's First Set of Document Requests. *See* Fed. R. Civ. P. 34 and Fed. R. Civ. P. 69 ("In aid of the judgment or execution, the judgment creditor... may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules....").

11. B&P Supply has failed to produce any documents or provide any response whatsoever to Judgment Creditor's First Set of Document Requests, despite repeated attempts by Douglas Dynamics' counsel to confer with B&P Supply's counsel. *See* Affidavit of Counsel, ¶ 11.

12. Douglas Dynamics is entitled to sanctions, including automatic allowance of this motion, because of B&P Supply's counsel's failure to respond to Douglas Dynamics' counsel's request for a discovery conference within seven days of the request. *See* Local Rule 37.1(A).

13. Douglas Dynamics is entitled to payment by B&P Supply and Mr. Houghton of Douglas Dynamics' expenses in making this motion, including attorney's fees. *See* Fed. R. Civ. P. 37(a)(4)(A) ("[T]he court shall, after affording an opportunity to be heard, require the party... or attorney advising such conduct or both of them to pay the moving part the reasonable expenses incurred in making the motion, including attorney's fees....")

WHEREFORE, Douglas Dynamics, LLC respectfully requests that the Court compel B&P Supply, Inc. to produce documents responsive to Judgment Creditor's First Set of Document Requests and order B&P Supply, Inc. and Jack E. Houghton, Jr. to pay Douglas Dynamics, LLC's expenses in making this motion, including attorney's fees.

Dated: March 29, 2007

The Judgment Creditor:
DOUGLAS DYNAMICS, LLC
By its attorney,

/s/ Jennifer K. Cannon

Jeffrey E. Poindexter - BBO No. 631922
Jennifer K. Cannon – BBO No. 664431
Bulkley, Richardson and Gelinas, LLP
1500 Main Street, Suite 2700
Springfield, MA 01115
Tel: (413) 781-2820
Fax: (413) 272-6805
Email: jpoindexter@bulkley.com
Email: jcannon@bulkley.com

Local Rule 7.1 and 37.1 Certification

Pursuant to Local Rules 7.1 and 37.1 and Fed. R. Civ. P. 37, the undersigned counsel for Douglas Dynamics, LLC hereby certifies that she has attempted to confer in good faith with B&P Supply, Inc.'s counsel by telephone and by letter, as detailed above and in the affidavit filed herewith in an effort to obtain the requested documents without court action.

/s/ Jennifer K. Cannon

Jennifer K. Cannon

Certificate of Service

I hereby certify that a true copy of the foregoing document was served upon the attorney(s) of record through the Court's CM/ECF system on March 29, 2007.

/s/ Jennifer K. Cannon

Jennifer K. Cannon

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION**

CIVIL ACTION NO. 04-11467-MAP

**DOUGLAS DYNAMICS, LLC,
Plaintiff/Judgment Creditor**

**B&P SUPPLY, INC.,
Defendant/Judgment Debtor**

AFFIDAVIT OF COUNSEL

I, Jennifer K. Cannon, hereby depose and state as follows:

1. I am an attorney with Bulkley, Richardson and Gelinias, LLP and counsel for judgment creditor Douglas Dynamics, LLC (“Douglas Dynamics”) in this case.

2. Douglas Dynamics was awarded judgment against B&P Supply, Inc. (“B&P Supply”) in this matter in the amount of \$139,247.93. Attached hereto as Exhibit A is a true and accurate copy of the Amended Judgment in this case.

3. To date, B&P Supply has paid no portion of the award.

4. I placed a telephone call to Jack E. Houghton, Jr., counsel of record for B&P Supply, on January 19, 2007 and left a voicemail message. In the voicemail message, I informed Mr. Houghton that Douglas Dynamics intended to serve document requests.

5. On January 23, 2007, Judgment Creditor's First Set of Document Requests was served on Mr. Houghton by facsimile and first-class mail. The transmittal letter requested that Mr. Houghton inform me as soon as possible if Mr. Houghton was not still representing B&P Supply. A true and accurate copy of Judgment Creditor's First Set of Document Requests as well as the transmittal letter is attached hereto as Exhibit B.

6. To date, B&P Supply has produced no documents and made no reply to Judgment Creditor's First Set of Document Requests.

7. On February 27, 2007, I placed a telephone call to Mr. Houghton and was informed that Mr. Houghton was unavailable. I left a message for Mr. Houghton requesting that he call me concerning B&P Supply's failure to produce documents or respond to Judgment Creditor's First Set of Document Requests.

8. On March 14, 2007, I placed another telephone call to Mr. Houghton and was again informed that Mr. Houghton was unavailable. I left another message for Mr. Houghton requesting that he call me concerning B&P Supply's failure to produce documents or respond to Judgment Creditor's First Set of Document Requests.

9. Mr. Houghton has not informed counsel for Douglas Dynamics that Mr. Houghton's status as attorney of record for B&P Supply has changed or that he no longer represents B&P Supply.

10. On March 16, 2007, I sent a letter to Mr. Houghton by facsimile and first-class mail requesting that B&P Supply produce documents responsive to Judgment Creditor's First Set of Document Requests and informing Mr. Houghton that Douglas Dynamics intended to file a motion to compel production if the documents were not produced by March 23, 2007. A true and accurate copy of my letter to Mr. Houghton dated March 16, 2007 is attached hereto as Exhibit C.

11. B&P Supply has failed to produce any documents or provide any response whatsoever to Judgment Creditor's First Set of Document Requests, despite repeated attempts by me to confer with Mr. Houghton.

Signed under the penalties of perjury this 29th day of March 2007.

/s/ Jennifer K. Cannon
Jennifer K. Cannon

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DOUGLAS DYNAMICS, LLC,
d/b/a Western Products,

Plaintiff(s)

v.

CIVIL ACTION NO. 3:04 -11467-MAP

B&P SUPPLY, INC.,

Defendant(s)

AMENDED JUDGMENT IN A CIVIL CASE

Michael A. Ponsor, D.J.

☐ **Jury Verdict.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by the Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

AMENDED JUDGMENT entered for the plaintiff Douglas Dynamics, LLC, d/b/a Western Products, against the defendant B&P Supply, Inc., pursuant to the court's memorandum and order entered this date, granting amended judgement for plaintiff in the total amount of \$139,247.93.

SARAH A. THORNTON,
CLERK OF COURT

Dated: February 6, 2006

By /s/ Maurice G. Lindsay
Maurice G. Lindsay
Deputy Clerk

EXHIBIT B



BULKLEY, RICHARDSON AND GELINAS, LLP

LAW OFFICES
1500 MAIN STREET, SUITE 2700
POST OFFICE BOX 15507
SPRINGFIELD, MA 01115-5507

TEL: (413) 781-2820
FAX: (413) 272-6804

JENNIFER K. CANNON
DIRECT DIAL (413) 272-6278
JCANNON@BULKLEY.COM

January 23, 2007

**VIA FACSIMILE AND
FIRST CLASS MAIL**

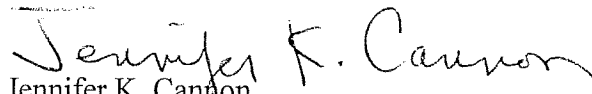
Jack E. Houghton, Jr.
78 Bartlett Avenue
Pittsfield, MA 01201

Re: Douglas Dynamics, LLC v. B&P Supply, Inc.
Civil Action No. 04-11467-MAP

Dear Jack:

As I stated in my voicemail message to you on Friday, January 19, 2007, I am enclosing Judgment Creditor's First Set of Document Requests in the above-captioned matter. If you are not still representing B&P Supply, Inc. in this matter, please let me know as soon as possible.

Very truly yours,


Jennifer K. Cannon

cc: Michael Farrell (w/encl.)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION**

CIVIL ACTION NO. 04-11467-MAP

DOUGLAS DYNAMICS, INC.,
Plaintiff

B&P SUPPLY, INC.,
Defendant

**JUDGMENT CREDITOR'S
FIRST SET OF DOCUMENT
REQUESTS**

Pursuant to Fed. R. Civ. P. 34 and 69, the Judgment Creditor, Douglas Dynamics, Inc. ("Douglas Dynamics"), hereby requests you, the Judgment Debtor, B&P Supply, Inc. ("B&P Supply"), to produce and permit Judgment Creditor to inspect and copy all the documents specified below which are in your possession, custody or control by February 26, 2007 at the offices of Bulkley, Richardson and Gelinas, LLP, 1500 Main Street, Suite 2700, Springfield, Massachusetts.

Instructions

A. These document requests are continuing in character and require Judgment Debtor to produce any additional documents in accordance with Fed. R. Civ. P. 26(e) that are located after your initial response.

B. If any responsive document is to be withheld or redacted on the basis of a claim of privilege or work product, please: (a) identify each such document and state the date and number of pages of the document; (b) identify its author and addressee and each person or entity to whom copies of the document were furnished or to whom the contents thereof were communicated; (c) provide a summary of the subject matter of the document; (d) state its present location and

custodian; (e) state the basis on which the asserted privilege is claimed; and (f) state the requests to which the document is responsive.

C. As to any responsive document which is not in Judgment Debtor's possession, custody or control, but which Judgment Debtor knows to exist or to have existed, please furnish a list identifying: (a) each such document; (b) the date of such document; (c) its author and addressee and persons to whom copies were furnished; (d) a summary of the substance of the document; and (e) if applicable, the date of its destruction.

D. The terms "and" as well as "or" are to be construed disjunctively or conjunctively, whichever makes the request the most inclusive.

Definitions

A. "Judgment Debtor," "you" or "your" means B&P Supply and includes any divisions, departments, affiliates, subsidiaries, agencies, predecessors, successors, present or former officers, directors, agents or employees of B&P Supply and all persons or entities acting or purporting to act on its behalf.

B. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a) including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

C. The term "communication(s)" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

D. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

Document Requests

1. A document containing your federal and state taxpayer identification numbers.
2. Copies of all federal and state income tax returns, including all schedules, filed by B&P Supply, solely or jointly, for the years 2003 through the present.
3. Any and all documents (including, but not limited to, financial statements) prepared for, and/or used by, B&P Supply, in connection with requesting or obtaining any financing, whether or not the financing was ever consummated, since November 1, 2003.
5. Any and all documents showing B&P Supply's income, including, but not limited to, ledgers, receipts, invoices, purchase orders, cash register records, W-2 Forms, 1099 Forms, K-1 Forms, payroll records, commission checks, and investment interest checks, from November 1, 2003 to the present.
6. Any and all documents pertaining to any income produced by any property or entity which B&P Supply now owns in whole or in part or did own in whole or in part for any period of time since November 2003 (including documents indicating the type of income produced, amount of income produced, the date and method of payment of this income to you and, the names and addresses of all tenants, renters and/or others from whom such income is received).
7. Any and all bank statements, bank records and canceled checks received, prepared and/or created since November 1, 2003, pertaining to any accounts (including, but not limited to, savings accounts, money market accounts, checking accounts, certificates of deposit and brokerage accounts) under B&P Supply's control or in which B&P Supply has an interest.
8. Any and all information provided by B&P Supply to any bank, savings institution, landlord, credit agency, car leasing company, finance company, or any other person or entity concerning B&P Supply's financial condition for the years 2003 through the present.

9. Copies of any and all savings bonds, futures, stock certificates or other securities in B&P Supply's name or held for the benefit of B&P Supply.

10. Any and all documents (including but not limited to statements of account, and statements of dividends) referring or relating to any brokerage accounts, bonds, futures, stock certificates, mutual funds, or other securities in which B&P Supply currently has an interest or has had an interest at any time since November 1, 2003, including any interest held jointly with any other person or entity.

11. Any and all documents (including accounts receivable, promissory notes, loans or mortgages) reflecting the identity of any person, natural or corporate, who owes B&P Supply, either solely or jointly, any money or property (including the address of any such person, the amount owed, and the date payable).

12. Any and all documents (including, but not limited to, registration certificates, certificates of value, and schedules of personal property) reflecting B&P Supply's ownership or interest, either solely or jointly, in any goods, wares, merchandise, computers, patents, copyrights, inventory, supplies, equipment, money, furniture, fixtures or chattels of any kind.

13. All documents (including titles and lease agreements) reflecting the make, model, serial number, the title or registration number, and license number for every vehicle (including, but not limited to, automobiles, boats, airplanes, trailers, trucks, vans and heavy machinery), piece of office equipment, construction equipment, manufacturing equipment or any other equipment used in any way in B&P Supply's business that B&P Supply has purchased, owned or leased during the past four years, either for corporate or other use.

17. Any and all documents (including, but not limited to, titles, deeds, deeds of trust and mortgages) pertaining to all real property (including, but not limited to, houses,

condominiums, cooperatives, undeveloped land, partially or fully improved land, apartment buildings, hotels, office buildings, shopping centers, warehouses, and factories) in which B&P Supply has an interest, either individually or with others, in B&P Supply's name or for B&P Supply's benefit.

18. All documents (including leases) pertaining to any real property, including residences, vacation homes, office space, and storage facilities, that B&P Supply rents, individually or jointly; the amount of the rent; and the identity of the lessor.

19. All documents reflecting any loan B&P Supply has obtained (and the proceeds thereof) or applied for, solely or jointly, from any financial institution or other lender since November 2003.

20. Any and all promissory notes and/or deeds of trust made by B&P Supply for property (domestic or foreign) in B&P Supply's name since November 2003.

21. Any and all purchase or rental receipts for equipment or furniture in B&P Supply's name or held for B&P Supply's benefit.

22. Any and all documents relating to any extension of credit to B&P Supply from November 2003 to the present, including but not limited to, VISA, MasterCard, American Express or other credit card statements.

23. Any and all joint venture and partnership agreements or other documents evidencing or relating to any interest B&P Supply now has or has had in any partnerships, limited or general, or joint ventures at any time from November 2003 to the present.

24. Any and all documents relating to any ownership interest that B&P Supply has in any foreign or domestic corporation, and articles of incorporation and bylaws for those corporations.

25. All trust agreements in which B&P Supply is a trustee or a beneficiary or that pertain to trusts that were established, directly or indirectly, by B&P Supply or for B&P Supply's benefit.

26. All documents pertaining to any transfer of real property made by B&P Supply since November 2003.

27. All documents pertaining to any transfer of assets made by B&P Supply since November 2003.

28. All documents relating to gifts or transfers of B&P Supply's interest in any partnership, joint venture, corporation or other investment since November 2003.

29. All documents reflecting the assignment by B&P Supply of any cause of action, judgment, insurance policy or income since November 2003.

30. All documents reflecting any pending litigation to which B&P Supply is a party, in any court or administrative agency, in which B&P Supply claims or anticipates any settlement or monetary recovery.

31. All documents listing holders of stock (common or preferred) or indebtedness, officers and members of the board of directors of B&P Supply since November 2003, including, but not limited to, stock ledgers and organizational charts.

32. All documents pertaining to any transfer or offering of B&P Supply stock, indebtedness or other assets since November 2003 (including, but not limited to, offering or private placement memoranda and purchase agreements).

33. All documents concerning any payment of any kind by B&P Supply to any stockholder, officer or member of the Board of Directors of B&P Supply, any relative of any stockholder, officer or member of the Board of Directors of B&P Supply, or any entity in which

any stockholder, officer or member of the Board of Directors of B&P Supply, or any relative of any stockholder, officer or member of the Board of Directors of B&P Supply, has or had an ownership interest from November 2003 to the present, including, but not limited to, salary, dividends, loans and lease payments.

34. All documents concerning any agreement between B&P Supply and any stockholder, officer or member of the Board of Directors of B&P Supply, any relative of any stockholder, officer or member of the Board of Directors of B&P Supply, or any entity in which any stockholder, officer or member of the Board of Directors of B&P Supply, or any relative of any stockholder, officer or member of the Board of Directors of B&P Supply, has or had an ownership interest from November 2003 to the present.

Dated: January 23, 2007

The Judgment Creditor:
DOUGLAS DYNAMICS, INC.
By its attorney,

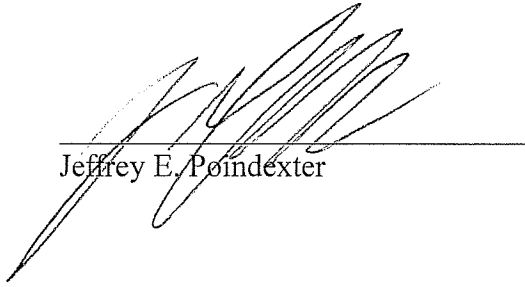


Jeffrey E. Poindexter BBO No. 631922
Bulkley, Richardson and Gelinas, LLP
1500 Main Street, Suite 2700
Springfield, MA 01115
Tel: (413) 781-2820
Fax: (413) 272-6805
Email: jpoindexter@bulkley.com

Certificate of Service

I hereby certify that a true copy of the foregoing document was served upon the following by facsimile and first-class mail, postage prepaid, on January 23, 2007:

Jack E. Houghton, Jr.
78 Bartlett Avenue
Pittsfield, MA 01201.



Jeffrey E. Poindexter

477262

EXHIBIT C



BULKLEY, RICHARDSON AND GELINAS, LLP

LAW OFFICES
1500 MAIN STREET, SUITE 2700
POST OFFICE BOX 15507
SPRINGFIELD, MA 01115-5507

TEL: (413) 781-2820
FAX: (413) 272-6804

JENNIFER K. CANNON
DIRECT DIAL (413) 272-6278
JCANNON@BULKLEY.COM

March 16, 2007

**VIA FACSIMILE AND
FIRST CLASS MAIL**


Jack E. Houghton, Jr.
78 Bartlett Avenue
Pittsfield, MA 01201

Re: Douglas Dynamics, LLC v. B&P Supply, Inc.
Civil Action No. 04-11467-MAP

Dear Jack:

As you know, Douglas Dynamics, LLC has an unsatisfied judgment against B&P Supply, Inc. in the amount of \$139,247.93. Judgment Creditor's First Set of Document Requests were served on you by facsimile and first-class mail on January 23, 2007. Responses were due by February 26, 2007. I have not received copies of the responsive documents. Nor have I had any response from you whatsoever, despite my telephone calls to you on February 27, 2007 and March 14, 2007. If the documents are not produced by Friday, March 23, 2007, I will be forced to file a motion to compel.

Very truly yours,


Jennifer K. Cannon

cc: Michael Farrell (via First Class Mail)